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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

VINCENT MARSHALL GALLEGOS,

Defendant and Appellant.

D073511

(Super. Ct. No. SCN365492)

APPEAL from a judgment of the Superior Court of San Diego County, K. Michael Kirkman, Judge. Reversed.

Denise M. Rudasill, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Robin Urbanski and Brendon W. Marshall, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Vincent Marshall Gallegos contends his convictions for making a false statement supporting an insurance claim and presenting false information supporting an insurance claim should be reversed because the trial court erroneously admitted evidence of his poor financial situation and indebtedness to prove motive. He also contends that the prosecution misstated the law by describing a reduced burden of proof during closing arguments and referencing evidence not in the record, and that the court erred by failing to dismiss the convictions under the discretion afforded it via Penal Code¹ section 1385. We conclude it was an abuse of discretion to admit evidence regarding debts owed by Gallegos and that the error was prejudicial, necessitating reversal. In light of our conclusion, we need not reach a decision on the remaining contentions.

BACKGROUND AND PROCEDURAL FACTS

On November 21, 2015, Gallegos reported to law enforcement that his 2014 Dodge Ram truck (Ram truck) had been stolen from a Park & Ride where he left it on November 20. Later that day, Gallegos reported the theft to his automobile insurance company. Christian Polanco, a field investigator for the insurance company, contacted Gallegos by telephone December 3. Gallegos reported the vehicle stolen from a Park & Ride, where he left it when he met a coworker for a ride to work that day. When

¹ Future statutory references are to the Penal Code unless otherwise specified.

Gallegos got a ride to his truck the next morning, it was gone. Gallegos also told Polanco he had two sets of keys, one with him and one under the rear bumper.²

On December 4, Polanco took a recorded statement from Gallegos. During the interview, Gallegos told Polanco he met a coworker at the Park & Ride for a ride to work on November 20.³ He locked the vehicle doors, and he had in his possession the key he had driven with. He also informed Polanco that the rear window did not shut all the way, and there was a spare key in a magnetic box hidden under the rear bumper.

Gallegos told Polanco he played softball after work, went to a local bar after the game with some friends, and caught a ride home with his cousin, who resided with him. He explained that he drove himself in a 1996 Toyota pickup to the Park & Ride the next morning and discovered his Ram truck was gone. Gallegos purchased the smaller pickup truck three months before the Ram truck was stolen. He also told Polanco he had received four sets of keys from the dealer, but he had only three sets of keys in his possession, which Polanco photographed.⁴

² Polanco offered conflicting testimony on this point. Polanco testified that Gallegos initially said on December 3 that he had two keys, but he also testified that on December 3 Gallegos said he had received four sets of keys and had three keys in his possession.

³ Polanco was never able to interview the coworker.

⁴ During the recorded statement on December 4, Gallegos told Polanco he had received three sets of keys when he purchased the vehicle, then corrected himself, explaining a fourth key was under the bumper in a magnetic box.

Gallegos told Polanco his wife took care of their finances, estimated what he thought the Ram truck's monthly payments might be, and said the payments were current. He also described a dent on the front passenger-side bumper and told Polanco one of the tires was leaking air.

On December 11, 2015, California Highway Patrol stopped a stolen white dump truck. Inside, law enforcement discovered disassembled portions of Gallegos's Ram truck and a key and transponder fob to the vehicle.⁵ The same driver was stopped a second time on December 24, 2015, with additional, stripped components of Gallegos's Ram truck in his possession. The dump truck driver did not know who owned the Ram truck and did not know Gallegos.

A couple months after first filing the auto insurance claim, Gallegos submitted an affidavit of vehicle theft. His signature was notarized. The completed affidavit's checked boxes indicated the vehicle's condition was excellent, there was no hidden key, and Gallegos had filed no other claims in the previous three years on any automobile. The form also indicated the auto loan was not past due.

The insurance company referred the matter to the Department of Insurance, and in March 2016, Ron Ramos, an investigator with the auto insurance fraud task force of the California Highway Patrol (CHP), became involved. Ramos collected cell phone records for the day Gallegos left the vehicle at the Park & Ride, and the records indicated

⁵ The service director for the car dealership described the fob as the part of the key that has buttons on it to unlock and open doors. The Ram truck at issue here had a fob with a microprocessor. The vehicle had to recognize the microprocessor for the car to unlock the power control module, allowing the vehicle to start.

Gallegos made calls from close to or north of his home that day, not from near the work site where Gallegos said he had been. The cell phone records did not disclose any communication between Gallegos and the driver of the dump truck.

In late May 2016, Ramos interviewed Gallegos, who confirmed it was his signature on the affidavit of theft form; he also said his wife had completed the document. Ramos did not interview the sheriff who took the initial report of theft.

Gallegos was charged with five counts: (1) defrauding an insurer (§ 548, subd. (a)), (2) presenting a false motor vehicle claim to an insurer (§ 550, subd. (a)(4)), (3) providing a false statement in support of an insurance claim (§ 550, subd. (b)(2)), (4) providing false and misleading information containing a material fact in support of an insurance claim (§ 550, subd. (b)(1)), and (5) filing a false and fraudulent report of vehicle theft (Veh. Code, § 10501, subd. (a)).

Prior to trial, the prosecutor sought to introduce financial evidence to prove motive, including evidence that the loan for the Ram truck incorporated money owed on a previous vehicle, evidence about bank deposits and withdrawals, and evidence about loan payments in the months leading up to the vehicle's disappearance. The defense moved to exclude all evidence of Gallegos's financial situation and indebtedness. The court acknowledged that a person owing money on a loan is not more likely than not to commit a crime, but it concluded that evidence relating to the vehicle loan was relevant because fraud was at issue, and the evidence was more probative than prejudicial. The court ruled evidence of the vehicle loan was admissible, but other financial information was to be excluded.

Prosecution Case

In addition to evidence of Gallegos's statements to the insurance company and the CHP investigator, at trial the People presented evidence that Gallegos did not attend work on November 20. The service director of the dealership where Gallegos purchased the truck testified that the custom and habit of the dealership was to provide two keys, and that the only way to start the Ram truck Gallegos purchased was with the transponder fob connected to the metal key. It was not possible to make a copy of the key that would start the vehicle.

Cary Thomas, an assistant manager of the collections department at California Coast Credit Union where Gallegos had an account, testified that the modified auto loan agreement included gap insurance to cover the difference between the value of the vehicle and the amount owed, and it also included mechanical repair coverage, bringing the loan amount to \$35,825. Thomas testified regarding deposits and withdrawals in the bank account in August, September, October, and November 2015, showing the account repeatedly overdrawn. She testified that there were two partial auto payments in August, totaling \$670.39, three dollars and one cent shy of the total amount due for the month. Automobile loan payments were made in September and October, and the bank had granted a deferment for the November payment.

The prosecutor explained in her closing argument that the important part of the case was that the balance due on the truck was \$36,000, even though the truck was valued at only \$27,000, and she argued the account was past due. She said: "[I]n the months leading up to the theft, we know that the withdrawals exceeded the deposits from the

California Coast Credit Union representative. There was financial hardship. And I suggest to you that [th]is suggests motive on the part of the defendant." She continued: "[M]otive is [a] factor that can tend to show guilt. And I submit that it does show guilt in this case."

Defense Case

Gallegos's wife testified that she handled the family finances, including paying the bills, creating the budget, and doing everything having to do with money, including insurance paperwork. She explained she filled out the affidavit of theft because she had easy access to the financial information the document requested.

Verdicts and Sentencing

The jury did not reach a verdict on count 1 (defrauding an insurer, § 548, subd. (a)), count 2 (presenting a false motor vehicle claim, § 550, subd. (a)(4)), or count 5 (false report of theft, Veh. Code, § 10501, subd. (a)). The jury found Gallegos guilty on count 3 (making false statement supporting an insurance claim, § 550, subd. (b)(2)) and count 4 (presenting false information supporting an insurance claim, § 550, subd. (b)(1)).

The court dismissed counts 1, 2, and 5, denied a defense motion to reduce the convictions to misdemeanors under section 17, subdivision (b), and declined to exercise its discretion to dismiss the case under section 1385.

The court imposed a three-year, suspended sentence and placed Gallegos on probation. The court also ordered Gallegos to pay restitution, leaving open the option to reduce the felony convictions to misdemeanors following payment of restitution.

Gallegos timely appealed.

DISCUSSION

Gallegos contends that the court erred by admitting evidence of his financial difficulties and indebtedness to prove motive, and that the admission of the evidence was prejudicial. The People concede that some of the evidence was erroneously admitted but contend the auto-loan-related evidence was not, and the admission of the additional financial evidence was harmless error.

A.

Erroneous Admission of Evidence

Relevant evidence is admissible; however, it may be excluded "if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352; see *Hernandez v. County of Los Angeles* (2014) 226 Cal.App.4th 1599, 1613 (*Hernandez*)). We review the admission of evidence under Evidence Code section 352 for abuse of discretion. (*People v. Eubanks* (2011) 53 Cal.4th 110, 144-145; *People v. Goldsmith* (2014) 59 Cal.4th 258, 266 [admissibility generally].) A trial court abuses its discretion when its ruling extends beyond the bounds of reason. (*People v. Kopatz* (2015) 61 Cal.4th 62, 85.) "We do not substitute our judgment for that of the trial court and may grant relief only when the asserted abuse of discretion constitutes a miscarriage of justice." (*Hernandez*, at p. 1613.)

"The elements generally necessary to find a violation of [section 550] are (1) the defendant's knowing presentation of a false claim, (2) with the intent to defraud." (*People ex rel. Government Employees Ins. Co. v. Cruz* (2016) 244 Cal.App.4th 1184,

1193; see § 550, subd. (b)(1) & (2); see also CALCRIM No. 2000.) Thus, conviction of either offense at issue in this case required proof of specific intent to defraud. (See *People v. Blick* (2007) 153 Cal.App.4th 759, 772.) "Specific intent . . . may be proved by circumstantial evidence." (*People v. Wilkins* (1972) 27 Cal.App.3d 763, 773; *People v. Burnham* (1961) 194 Cal.App.2d 836, 842 [consider act together with surrounding circumstances to establish intent to defraud].) However, it is well-established that evidence of a defendant's poverty or indebtedness is generally inadmissible to prove motive to commit robbery or theft because "reliance on such evidence is deemed unfair to the defendant, and its probative value is outweighed by the risk of prejudice."⁶ (*People v. Koontz* (2002) 27 Cal.4th 1041, 1076.)

Consistent with this rule, the parties agree that the admission of evidence discussing Gallegos's deposits and withdrawals over several months before the alleged auto theft was improper, and we agree. However, the parties disagree about whether the evidence regarding the auto loan and the timeliness of the car payments was admissible and whether the erroneous admission of the financial testimony about deposits and withdrawals was harmless

In its ruling regarding the motion in limine, the trial court recognized that owing money on an auto loan does not make someone more likely than not to commit a crime,

⁶ While "[e]vidence of poverty or indebtedness is admissible . . . to refute a defendant's claim that he did not commit the robbery because he did not need the money [citation], or to eliminate other possible explanations for the defendant's sudden wealth after a theft offense" (*People v. Edelbacher* (1989) 47 Cal.3d 983, 1024), neither party argues the exceptions are relevant here. Gallegos neither claimed a lack of need for the funds, nor did he experience a sudden influx of wealth.

but it concluded information about the existence, amount, and status of the auto loan at the time of the alleged theft were relevant as potential motive. The court said the admission of that evidence would not be prejudicial because most "jurors have a car loan, probably." This decision ignores the clearly-established rule that reliance on poverty or indebtedness alone to prove motive is outweighed by the risk of prejudice. (*People v. Hogan* (1982) 31 Cal.3d 815, 854 (*Hogan*), disapproved of on other grounds in *People v. Cooper* (1991) 53 Cal.3d 771, 835.)

The court's ruling on the motions in limine highlights the prosecution's purpose for introducing the evidence of Gallegos's debt; it provided motive to support the allegation that he intended to defraud the insurance company. The prosecutor stated in her closing argument that the evidence of deposits and withdrawals demonstrated financial hardship, and the financial hardship was Gallegos's motive, which showed he was guilty. This was the only evidence offered to prove motive, and reliance on poverty or indebtedness alone to prove motive is not permissible. (*Hogan, supra*, 31 Cal.3d at p. 854.)

The Attorney General contends the evidence that Gallegos was not current on his truck payment was admissible because it went directly to the question of whether he had provided false information on the affidavit of theft, which stated the value of the vehicle, the amount due, and that payments were current. However, this information did not concern a material fact. (§ 550, subd. (b)(1) & (2).)

"[T]he intent to defraud the insurer is necessarily implied when the misrepresentation is material and the insured wilfully makes it with the knowledge of its falsity." (*Cummings v. Fire Ins. Exch.* (1988) 202 Cal.App.3d 1407, 1418.) Here, how

much money Gallegos owed on the truck, if any, was not relevant to the validity of the insurance claim and so was not material. Moreover, this information, when taken together with other inadmissible evidence, including the inclusion of previously-owed auto loan money into the current loan total and the deposit and withdrawal history, was prejudicial because it painted a picture that Gallegos needed money. The People presented this as motive for Gallegos's implied participation in his vehicle's theft, even though there was no other evidence of motive. Accordingly, the admission of evidence related to Gallegos's financial situation or debts violated Evidence Code section 352 and was an abuse of discretion.

B.

Harmless Error

The Attorney General contends the error was harmless because it is not reasonably probable the verdict would have been more favorable to the defendant absent the error, given the false statements made by the defendant and other evidence as to guilt for counts 3 and 4. He further contends that testimony regarding the defendant's financial situation was minor because the prosecutor focused on the inconsistencies in the defendant's statements during closing arguments. We disagree.

"[T]he erroneous introduction of evidence is typically evaluated under the *Watson* standard. [Citation.] Under that standard, reversal is required only if it is reasonably probable the defendant would have obtained a more favorable result had the evidence been excluded. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)" (*People v. Carrillo* (2004) 119 Cal.App.4th 94, 103.) "We have made clear that a 'probability' in this context

does not mean more likely than not, but merely a *reasonable chance*, more than an *abstract possibility*." (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715.)

To prove a defendant acted with specific intent to defraud, the People must show the defendant knowingly presented false, material information to the insurance company for the purpose of inducing the insurance company to pay an illegitimate claim. (Cf. *People v. Haydon* (1951) 106 Cal.App.2d 105, 107.) The financial motive was a central focus in the prosecution's case because the People offered no other evidence of intent to defraud. The People stipulated that the dump truck driver did not know Gallegos, and law enforcement testified that there were no phone calls connecting Gallegos to the driver. The People presented no evidence tying Gallegos to the theft of his vehicle, either directly or through an intermediary.

Absent the financial evidence, the People's case is limited to lies told by Gallegos which do not provide motive or otherwise connect Gallegos to the theft of his Ram truck. The false statement supporting count 3 was that Gallegos's coworker drove him to work the day his truck was stolen, when he did not attend work that day. He also gave inconsistent statements to the insurance investigator, once saying a coworker drove him to the Park & Ride the day he discovered his truck missing, but later saying he drove himself. Though these statements cast doubt on Gallegos's credibility, they do not tie Gallegos to the Ram truck's theft.

The false statements supporting count 4 were inconsistencies between Gallegos's oral statements and what appeared in the affidavit of theft, as well as inaccurate

statements on the affidavit. Specifically, he reported there was a dent in the bumper, while the affidavit described the vehicle in excellent condition. He reported there was a hidden key in a magnetic box, but the affidavit indicated there were no hidden keys, and his affidavit stated he had not filed a vehicle theft claim within three years when he had the year before. The dealer testified that its practice was to give two keys to customers, but Gallegos reported he had three or four keys, then supplied three copies, including one with the transponder fob that could operate the vehicle.

Even taken together, these false statements do not support an inference that Gallegos intended to defraud the insurance company. While "[d]eliberately false statements to the police about matters that are within an arrestee's knowledge and materially relate to his or her guilt or innocence have long been considered cogent evidence of a consciousness of guilt," (*People v. Williams* (2000) 79 Cal.App.4th 1157, 1167-1168), none of these lies materially related to Gallegos's guilt; none of this information connected him to the loss of his truck.

The Attorney General argues that these lies show Gallegos's only intent was to defraud the insurance company, and the financial information played a minor role in the trial and summation. We disagree.

The People relied on the evidence of debt for motive and highlighted it in the closing argument.⁷ Although evidence of motive is not an element of the crimes (*People*

⁷ Even with the financial evidence, the prosecution's case was weak; the highlighted lies, troubling as they may be, do not tie Gallegos directly to the theft of his Ram truck.

v. Smith (2005) 37 Cal.4th 733, 740 [motive itself not usually element of criminal offense]), the People's reliance on financial motive evidence to prove intent to defraud so infected this case that it is reasonably probable the jury would have reached a more favorable outcome without such evidence. Accordingly, we reverse the judgments on counts 3 and 4.⁸

C.

Remaining Contentions

Gallegos makes two other arguments in his appeal. First, he contends that the prosecutor engaged in misconduct during closing arguments by referencing other potential witnesses who did not testify and through her comments describing reasonable doubt. Second, he contends the trial court erred by declining to dismiss the convictions pursuant to the court's discretionary authority under section 1385. Having concluded *ante* that the judgments must be reversed for an alternative reason, we do not reach a decision on these contentions.

DISPOSITION

The judgments for counts 3 and 4 are reversed.

⁸ Even if evidence of the auto loan had been properly admitted, and we concluded it was not, it is not possible to separate the evidence regarding the auto loan payments from other financial testimony—including the testimony related to deposits and withdrawals or the explanation that the Ram truck loan incorporated a previous auto loan debt—to assess which of these facts, if any, influenced the jury's verdict.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

O'ROURKE, J.